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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1407

JAMES TRAINOR, et al.,

Appellees.

vs.

JUAN HERNANDEZ, et al.,

Appellants.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

BRIEF FOR APPELLEES MORGAN M. FINLEY AND RICHARD J. ELROD IN SUPPORT OF APPELLANTS' POSITION

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OPINION BELOW

The opinion of the three judge panel for the Northern District of Illinois, Eastern Division, is reported at 405 F. Supp. 757 (N.D. Ill. 1975). The courts' judgment order and opinion are appended hereto in Appendix B.

JURISDICTION

On December 2, 1974 the plaintiffs brought this 42 U.S.C. § 1983 class action seeking declaratory and injunctive relief from the Illinois Attachment Act. A three judge panel was convened pursuant to 28 U.S.C. §§ 2281 and 2284. The judgment of the Court was entered December 15, 1975 (App. A), granting the plaintiffs requested relief.

Appellees Morgan M. Finley and Richard J. Elrod filed their Notice of Appeal in the District Court on May 10, 1976. The Supreme Court of the United States has jurisdiction to hear this appeal pursuant to 28 U.S.C. § 1253.

QUESTIONS PRESENTED

I. Whether the three judge district court should have abstained from hearing this case.

II. Whether the statutory procedures provided in the Illinois Attachment Act, Illinois Revised Statutes, 1973, Chapter 11, afford these plaintiffs due process of law.

STATUTE INVOLVED

Chapter 11 of the Illinois Revised Statutes, 1973, also known as the Illinois Attachment Act, is reprinted herein as Appendix C.

STATEMENT OF THE CASE

Plaintiffs filed this class action pursuant to 28 U.S.C. § 1343(3) and (4) and 42 U.S.C. § 1983. They sought declaratory and injunctive relief from the Illinois Attachment Act (reprinted at Appendix C). Originally, the State of Illinois, on the relation of the Illinois Department of Public Aid, initiated an attachment action in the Illinois courts against certain of the plaintiffs' funds held by a credit union. The basis of the action was that the named plaintiffs had fraudulently procured public assistance in that they had failed to disclose the existence of these funds to the State when application for assistance was made. The State suit was brought pursuant to section 11-21 of the Illinois Public Aid Code (Ill. Rev. Stat. 1973, ch. 23, § 11-21, reprinted herein as Appendix D). This statutory section allows the filing of either civil or criminal actions against a person who fraudulently conceals any facts which affect his entitlement to public assistance.

The Department of Public Aid alleged by way of affidavit in its attachment suit that these plaintiffs had received $3,720.20 to which they were not entitled. Pursuant to the Illinois Attachment Act, the State may receive a writ of attachment after it files its claim if it has alleged one of nine circumstances which the act specifies as grounds for an attachment. All attachment claimants, except state agencies, are required to post a bond twice the value of the claim or property (see § 4a, 4b in Appendix C).

The claim, supported by affidavit, and the bond is filed with the Clerk of the Court, that is, appellee Morgan M. Finley, who issues the writ of attachment. The writ is directed to the Sheriff, who executes thereon. The attachment defendant must appear and plead not less than ten nor more than sixty days from the date of the writ. (§§ 6,

25). The attachment plaintiff must file his complaint at least ten days before the return date. The defendant has the option to file any responsive pleading to the complaint (§ 26, 27). The burden of proof of the claim is on the plaintiff, who is also liable to damages and costs for wrongfully filed claims (§§ 4a, 27). The defendant need not relinquish control of the property if he posts a bond twice the value of property or debt (§ 14, 15). The Sheriff maintains custody of property pending disposition (§ 14) and the garnishee maintains control of funds (§ 21).

Plaintiffs at bar sought no relief from the writ of attachment in the State Court proceedings but instead brought this suit. The State Court suit is unresolved pending final disposition of this case. The gist of plaintiffs' claim is that they were denied due process of law in that the writ may issue without judicial scrutiny and without prior notice or an opportunity to be heard. The three judge court certified both plaintiff and defendant classes. Plaintiffs' motion for a temporary restraining order was denied after the State agreed to release one half of the attached funds. The defendants moved to dismiss the complaint and the plaintiffs moved for summary judgment. Declaratory and injunctive relief was granted to the plaintiffs and the defendants' motions for a stay in the injunction was denied, Circuit Judge Pell dissenting.

SUMMARY OF ARGUMENT

I.

All defendants urged the District Court to abstain from hearing the federal suit on its merits. Briefs were filed urging the applicability of *Huffman* v. *Pursue, Ltd.*, 420 U.S. 592 (1975), which case was decided by this court during the District Court's consideration of the defendants' motions to dismiss and the plaintiffs' motion for summary judgment. These defendants believe that *Huffman* is directly applicable to these proceedings and that the District Court should properly have abstained from hearing these plaintiffs' claims.

II.

These defendants defer to the appellants to make argument concerning the constitutionality of the statute in question. These defendants specifically adopt appellants' argument on this issue and incorporate it herein as their own.

ARGUMENT

I.

THE THREE JUDGE DISTRICT COURT SHOULD HAVE ABSTAINED FROM HEARING THIS CASE ON THE MERITS.

For reasons which can readily be identified, all governmental authorities are inherently officious. Their nature causes them to seek out the boundaries of their authority. Statutory proscription is generally vague and legislative guidance is meager. Agencies are under constant pressure to become involved in matters which are increasingly removed from their stated purpose. Governmental authorities take on national characteristics. Spheres of influence are created and quickly challenged. Power vacuums exist only briefly. Ubiquitous federal interference with state and local authorities has generated a new national political issue. While such intermeddling is well intentioned, it is no less obnoxious to the local authority seeking to enforce federal constitutional rights. The presumption by federal authorities that they can better deal with any given problem is totally repugnant to the local official. It is against this background that the present case comes before the Court. This court is called upon to act as a buffer between the federal and state court systems. For this purpose the Supreme Court acts not as a superior federal court, but as an arbiter between the two systems.

Judicial abstention postpones or altogether avoids the determination of an issue of law when that issue would more appropriately be made by another court or agency. There are a number of reasons for applying abstention, but the underlying reason is usually that a state court should not be precluded from having the first opportunity to review constitutional attacks on its own laws or procedures.

This court recognized the problem long before it became an issue of eager candidates for office. In 1941 *Railroad Comm'n* v. *Pullman,* 312 U.S. 496, the first step was taken. It was deemed prudent to allow state courts to first rule on issues concerning state law as such determination could well moot or otherwise eliminate the federal claim. The *Pullman* decision recognized the delicate (and not always harmonious) relationship between state and federal governments and the need to avoid unnecessary friction between the two. Originally, abstention was utilized usually in those cases where friction was actually a present problem. Thirty-five years later it has evolved into a doctrine by which courts should refuse to exercise jurisdiction in any case which could properly be heard by a state tribunal, absent certain special exceptions. The District Court for the Northern District of Illinois, Eastern Division should have abstained in the case at bar.

Recent holdings by this court leave little doubt that abstention has come a long way from *Pullman.* This court, if not the lower federal courts, has specifically found the state courts fully competent to rule on federal constitutional claims. Resort to the federal forum, we are admonished, should be the last resort, not the first. A developing line of cases in which this court has applied judicial abstention is exemplified by *Younger* v. *Harris,* 401 U.S. 37, 91 S. Ct. 746 (1971) and *Huffman* v. *Pursue, Ltd.,* 420 U.S. 592, 95 S. Ct. 1200 (1975). While *Younger* applied abstention to pending state criminal proceedings, *Huffman* extended the doctrine to include civil litigation – at least that which is cloaked with quasi-criminal characteristics.

In *Huffman,* an Ohio movie theater was ordered closed pursuant to an Ohio nuisance statute. The theater owner filed suit in the federal district court rather than appeal the state decision to the state appellate courts. A three-

judge panel enjoined the execution of the state court judgment. In the case at bar, a state court proceeding was in progress in which all of the claims raised by the plaintiffs here could have been fully litigated. Mr. Justice Rehnquist, writing for the majority, pointedly stated,

> "A civil litigant may, of course, seek review of any federal claim properly asserted in and rejected by the state courts. Moreover, where a final decision of a state court has sustained the validity of a state statute challenged on federal constitutional grounds, an appeal to this court lies as a matter of right."
> [95 S. Ct. at 1209]

The theater owners were challenging the state court action on the grounds that they were being denied property without due process of law. The similarity between the claims made in *Huffman* and the case at bar is striking. *Huffman* held,

> "Appellee's argument . . . apparently depends on the unarticulated major premise that every litigant who asserts a federal claim is entitled to have it decided on the merits by a federal, rather than a state, court. We need not consider the validity of this premise in order to reject the result which appellee seeks. Even assuming, *arguendo,* that litigants are entitled to a federal forum for the resolution of all federal issues, that entitlement is most appropriately asserted by a litigant when he seeks to *relitigate* a federal issue adversely determined in *completed* state court proceedings." [95 S. Ct. at 1209]

The Court noted that federal court preemption of constitutional claims "can readily be interpreted 'as reflecting negatively upon the state court's ability to enforce constitutional principles.' " [Supra at 1208, citing *Steffel* v. *Thomson,* 415 U.S. 452 at 462]. Moreover, there should be no "assumption that state court judges will not be faithful to their constitutional responsibilities." [supra at 1211]. Permitting the lower federal courts to interject themselves, at will, into the determinations of state law will inevitably lead to the erosion and eventual demise of the autonomy, integrity, and credibility of the state court system.

It is now clear that a state court proceeding is not to be considered con[illegible]eted until after available appellate remedies have been exhausted. In the case at bar the plaintiffs initiated the federal proceeding before the state court had an opportunity to conduct its initial hearing. The propriety in affording the state court the opportunity it deserves to resolve federal issues rests upon the well established principle of comity and federalism. While the District Court did not make clear its reasons for believing these principles did not apply, it is fair to assume that it felt justified in reaching the merits of the case because "on its face the Illinois Attachment Act does not meet the due process standards." [App. B9]. Interestingly enough, the District Court in *Younger* v. *Harris,* 401 U.S. 37, 91 S. Ct. 746 (1971), struck down a statute because of its facial invalidity. This court in reversing that decision, held unequivocally that facial constitutional defects in a statute are not, in themselves, an exceptional circumstance to justify interfering with the state proceedings. This court concluded in *Huffman* that, as in the *Younger* holdings, there are two exceptions to the doctrine of abstention. If the state proceeding is conducted in bad faith or if the challenged statute is "flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph and in whatever manner and against whomever an effort might be made to apply it," [*Huffman, supra,* at 1212] then the federal district court need not abstain. These defendants need only observe that the Dis-

trict Court in the case at bar found neither bad faith nor flagrant infirmity in every aspect as required by *Younger* and reaffirmed by *Huffman*. Absent such a special finding, it was error for the District Court to reach the merits. It should be made clear that *Huffman* was decided by this court *prior* to the District Court's decision and *Huffman* was fully briefed.

Assuming, arguendo, that *Huffman* is applicable only when a quasi-criminal statute is at issue in the state courts, it is clear that the underlying basis for the proceeding under the Illinois Attachment Act was quasi-criminal, e.g.: fraud, (Ch. 23, § 11-21, *Ill. Rev. Stat.*). The Ohio nuisance statute clearly gave a civil remedy for a criminal act (the showing of obscene films) and is perfectly analogous to this statute in which a civil remedy is given for a criminal act (arguably these plaintiffs could be prosecuted for felony theft in Illinois, see Ch. 38, § 16-1(b) and (e)(2), *Ill. Rev. Stat.*). Both Ohio's nuisance statute and Illinois' Attachment Act are quasi-criminal in that they both may be used in aid of state criminal laws. The District Court found it to be "mere happenstance" [App. B. 5] that the State of Illinois was the petitioner in the state proceedings. It further found it to be highly "coincidental" that the state proceeding could arguably be quasi-criminal in nature. Having made those observations, the court then proceeded to disregard the consequence of those concurrences, that is, the impact that federal interference would have upon comity and federalism considerations vis-a-vis the state action.

Another consideration is that even if this court were to believe that an adequate exception to abstention exists, the District Court erred in entering the injunction. *Fenner* v. *Boykin,* 271 U.S. 240, 46 S. Ct. 492 (1926), and as reaffirmed in *Younger,* required that extraordinary cir-

cumstances must be present to justify federal injunctive relief. The "irreparable injury" necessary for any injunction was deemed not a sufficient reason for granting injunctive relief. Rather, the irreparable injury must be "great and immediate." Plaintiffs have failed to adequately explain how irreparable injury which is great and immediate is present in this case. Plaintiffs were charged with having fraudulently received nearly $4,000.00 in financial assistance. The state had attached $600.00 in plaintiffs' savings account which sum was reduced to $300.00 at the time the District Court entered its decision in this case. It is assumed by plaintiffs that having a sum of money involved in litigation for forty-four days meets the rigorous injury requirements even though costs and damages could be assessed against the state if the claim proved baseless. Plaintiffs could also have moved for an early hearing in order to present any defenses on the merits they might have had but declined to do so.

In addition to *Huffman* and *Younger,* this court has expanded the applicability of abstention to factually different but nevertheless analogous situations.

In *Rizzo* v. *Goode,* 96 S. Ct. 598 (1976), suit was brought in the U.S. District Court for the Eastern Division of Pennsylvania alleging unconstitutional mistreatment of minority citizens. The District Court directed the petitioners to draft a system, for the court's approval, dealing with citizens' complaints of police misconduct, including detailed suggestions for revising police manuals and procedural rules dealing with citizens and complaints. The draft was later incorporated into the court's final judgment. The appellate court affirmed this exercise of equitable relief.

Petitioners to the Supreme Court, who were the Mayor of Philadelphia, the City Managing Director, and the Police Commissioner, claimed that the District Court had caused an unwarranted intrusion into the discretionary authority to perform their duties, which was committed to them by State and local law.

This Court reversed, noting "the special delicacy of the adjustment to be preserved between federal equitable power and state administration of its own laws" [96 S. Ct. at 607]. Further, in adding that the principles of federalism apply not only when seeking to enjoin a state criminal proceeding, this Court interpreted *Huffman,* by holding that "the same principles of federalism may prevent the injunction by a federal court of a state civil proceeding once begun." [*supra,* at 608]. Hence, *Rizzo* stands for the proposition that the independence of state functions and procedures is to be safeguarded, whether these functions and procedures are criminal or civil in nature.

On July 6, 1976, this Court decided the cases of *Stone* v. *Powell* and *Wolff* v. *Rice* (44 L.W. 5313 and 5317), cases which again demonstrate a tendency to avoid encroachment on the state courts. Inmates Powell and Rice brought federal habeas corpus actions alleging that use of illegally seized evidence led to their convictions in state courts. This Court held that,

> "... Where a state has provided an opportunity for full and fair litigation of a 4th amendment claim, the Constitution does not require that a state prisoner be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial."

Similarly, in the case at bar the State Court action provided an opportunity for full and fair litigation of the due process claim. *Carey* v. *Sugar,* 96 S. Ct. 1208 (1976), also

expresses this court's view about the current role of abstention.

As in *Powell* and *Rice, Rizzo, Younger* and *Huffman,* the better course of action for the District Court in this case was to abstain from proceeding on the merits. Abstention accords integrity to the state court system, a system operating parallel to the federal courts and one which is fully competent, and obligated by the United States Constitution, to decide issues of federal constitutional law.

II.

THE STATUTORY PROCEDURES PROVIDED IN THE ILLINOIS ATTACHMENT ACT, ILLINOIS REVISED STATUTES, 1973, CHAPTER 11 AFFORD THESE PLAINTIFFS DUE PROCESS OF LAW.

These defendants defer to the appellants to make argument concerning the constitutionality of the statute in question. These defendants specifically adopt appellants' argument on this issue and incorporate it herein as their own.

CONCLUSION

For the foregoing reasons, it is submitted by these defendants that the decision of the District Court should be reversed.

Respectfully submitted,

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APPENDIX A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUAN HERNANDEZ and MARIA HERNANDEZ, individually and on behalf of all other persons similarly situated,

Plaintiffs,

v.

MORGAN M. FINLEY, Clerk of the Circuit Court of Cook County, individually and in his official capacity and on behalf of all other persons similarly situated, RICHARD J. ELROD, Sheriff of Cook County, individually and in his official capacity and on behalf of all other persons similarly situated, JAMES TRAINOR, Acting Director of the Illinois Department of Public Aid, individually and in his official capacity, and VIVIAN O'MALLEY, individually and as agent of the Illinois Departmnet of Public Aid,

Defendants.

No. 74 C 3473

ORDER

In accordance with this Court's memorandum opinion, the Court enters judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure as follows:

1. Illinois Revised Statutes, Chapter 11, Sections 1, 2, 2a, 6, 8, 10 and 14 are on their face patently violative of the due process clause of the Fourteenth Amendment to the United States Constitution.

2. Defendants Finley and Elrod are ordered to cause release of all property of plaintiffs Juan and Maria Hernandez attached pursuant to writ of attachment.

3. Defendant Finley and all other clerks for the judicial circuits of Illinois, their successors, agents and employees are hereby enjoined from issuing writs of attachment pursuant to the Illinois Attachment Act, Illinois Revised Statutes, Ch. 11, § 1, subsections sixth through ninth.

4. Defendant Elrod and all other county sheriffs of the State of Illinois, their successors, agents and employees are hereby enjoined from executing writs of attachment pursuant to the Illinois Attachment Act, Illinois Revised Statutes, Ch. 11, § 1, subsections sixth through ninth.

5. Defendants Trainor and O'Malley are hereby enjoined from authorizing and processing applications for writs of attachment pursuant to the Illinois Attachment Act, Illinois Revised Statutes, Ch. 11, § 1, subsections sixth through ninth.

6. Defendants Finley and Elrod, all other clerks of the judicial circuits of Illinois, and all other county sheriffs of Illinois, are ordered to cause release of any property currently attached pursuant to the Illinois Attachment Act, Illinois Revised Statutes, Ch. 11, § 1, subsections sixth through ninth, and give notice of such release to all persons whose property is the object of such attachments.

7. The question of plaintiffs' entitlement to money damages is remanded for determination to Judge Kirkland, the Judge to whom this case was originally assigned.

ENTER:

WILBUR F. PELL, JR.,
U. S. Circuit Court Judge

JOEL M. FLAUM,
U. S. District Court Judge

ALFRED Y. KIRKLAND,
U. S. District Court Judge

DATED: December 15, 1975

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUAN HERNANDEZ and MARIA HERNANDEZ, individually and on behalf of all other persons similarly situated,

Plaintiffs,

v.

MORGAN M. FINLEY, Clerk of the Circuit Court of Cook County, individually and in his official capacity and on behalf of all other persons similarly situated, RICHARD J. ELROD, Sheriff of Cook County, individually and in his official capacity and on behalf of all other persons similarly situated, JAMES TRAINOR, Acting Director of the Illinois Department of Public Aid, individually and in his official capacity, and VIVIAN O'MALLEY, individually and as agent of the Illinois Department of Public Aid,

Defendants.

No. 74 C 3473

Before PELL, Circuit Judge, FLAUM and KIRKLAND, District Judges.

KIRKLAND, District Judge. This matter comes before the Court on motion of defendants to dismiss the complaint for failure to state a claim upon which relief could be

granted. Plaintiffs have cross-filed for summary judgment on entitlement to declaratory and injunctive relief. Further, on instruction by the Court, the parties briefed the issue of whether, in light of *Huffman* v. *Pursue, Ltd.*, ——U.S. ——, 95 S. Ct. 1200 (1975), this Court should enjoin a pending state attachment proceeding against plaintiffs prior to exhaustion of state judicial remedies.

The Illinois Department of Public Aid ("IDPA") filed suit in Circuit Court of Cook County, Illinois, on October 30, 1974, alleging that plaintiffs had fraudulently concealed the existence of monies while applying for and receiving public aid assistance. Simultaneous with filing of this suit, IDPA filed an attachment complaint which resulted in attachment of plaintiffs' funds in a credit union on November 5, 1974. After answering the complaint and filing their appearance, plaintiffs filed the instant complaint in federal court challenging the constitutionality of the Illinois Attachment Act and seeking declaratory, injunctive and other relief.

Jurisdiction is alleged under 28 U.S.C § 1343 (3) and (4) and 42 U.S.C. § 1983. The complaint challenges the constitutionality of the Illinois Attachment Act, Ch. 11, §§ 1, 2, 2a, 6, 8, 10 and 14. The Act is alleged to be unconstitutional both on its face and as applied on grounds that it violates the due process clause of the Fourteenth Amendment to the United States Constitution.

Two issues are presented to this Court for decision: (1) does *Huffman* v. *Pursue, Ltd., supra*, prevent this Court from intervening in a state civil proceeding filed pursuant to a state statute alleged to be unconstitutional; and (2) if the preceding question is answered in the negative, are the challenged portions of the Illinois Attachment Act unconstitutional?

I. MUST FEDERAL ACTION BE RESTRAINED PENDING EXHAUSTION OF STATE REMEDIES?

The Supreme Court in *Huffman* extended for the first time the doctrine of non-interference with state criminal proceedings, articulated in *Younger* v. *Harris*, 401 U.S. 37 (1971), to a civil proceeding. The remedy presently sought by plaintiffs would require this Court to enjoin a state court civil proceeding; hence we are constrained at the outset to examine the applicability of *Huffman* prior to any consideration of the merits of this case.

The only obstacle to reaching the merits of this case would be a determination that the principles articulated in *Huffman* apply here.

It is clear that this Court is empowered to enjoin state action under certain circumstances, notwithstanding the general prohibtion against such injunctions found in 28 U.S.C. § 2283. *Mitchum* v. *Foster*, 407 U.S. 225 (1972), held that the anti-injunction rule of Section 2283 does not apply to civil rights actions under 42 U.S.C. § 1983. Likewise, if the Illinois attachment proceeding were determined not to be "proceedings in a state court", the anti-injunction statute by its own terms would not apply. This Court holds the challenged attachment proceeding to be a pending proceeding within the meaning of Section 2283.

The *Huffman* case arose out of an attempt by the State of Ohio to close a theater which showed allegedly obscene films, on grounds that the theater was creating a public nuisance. The State proceeded under the Ohio nuisance statute, which defined a place exhibiting obscene films as a nuisance. The Ohio Court determined in an adversary proceeding that the films were obscene and immediately

ordered that the theater be closed. Following this decision, and without exhausting state appellate procedure, the theater operator filed suit in federal court. A three-judge district court held that closing of the theater by the Ohio State Court was violative of the plaintiff operator's constitutional rights because the films had not been declared obscene prior to their exhibition. The plaintiff operator had not exhibited any films after the determination that said films were obscene.

The Supreme Court vacated the order of the three-judge court on grounds of equity, comity and federalism, holding that the principles of *Younger* v. *Harris, supra,* were applicable even though the state proceeding was civil in nature.

The *Younger* decision gave approval to long-standing policy that federal courts should not interfere with state criminal proceedings except in extraordinary circumstances. See *Fenner* v. *Boykin,* 271 U.S. 240 (1926); *Spielman Motor Sales Co.* v. *Dodge,* 295 U.S. 89 (1935); *Stefanelli* v. *Minard,* 342 U.S. 117 (1951). *Younger* specifically held that federal injunctive relief should not be employed against state criminal prosecutions except: (1) upon a showing of "irreparable injury" that is both "great and immediate"; or (2) where the statute in question is "flagrantly and patently violative of express constitutional prohibitions". 401 U.S. at 53.

The decision in *Huffman* is significant in that it represents the first extension of these principles to non-criminal proceedings. In extending this doctrine, the Court stated that action of the State of Ohio was more akin to criminal proceedings than most civil cases. 95 S. Ct. 1208. This Court is of the opinion, however, that *Huffman* v. *Pursue, Ltd.,* is not applicable here for two reasons.

First, the rule of *Younger* was established for, and has been limited in application to, criminal proceedings. The Court's principal justification for extension of the *Younger* doctrine in *Huffman* was that Ohio's civil proceeding was "in aid of and closely related to criminal statutes". 95 S. Ct. 1208. In *Huffman,* the State of Ohio proceeded under a statute which gave an exclusive right of action to the state. By contrast, the Illinois Attachment Act provides a cause of action for any person, public or private. It is mere happenstance that the State of Illinois was the petitioner in this attachment proceeding. It is likewise coincidental that the pending state proceedings may arguably be quasi-criminal in nature; under the Illinois Attachment Act, they need not be. These major distinctions preclude this Court from extending the principles of *Younger,* based on considerations of equity, comity and federalism, beyond the quasi-criminal situation set forth in *Huffman.*

Second, an express exception to the *Younger* rule of non-interference in state criminal proceedings exists where the challenged statute is patently and flagrantly violative of the Constitution. This Court is of the opinion that the present case falls within that exception, for reasons hereinafter set forth.

II. IS THE ILLINOIS ATTACHMENT ACT UNCONSTITUTIONAL?

Four recent Supreme Court cases are controlling authority in an analysis of constitutional validity of summary creditor remedies. These cases include *Sniadach* v. *Family Finance Corp.,* 397 U.S. 254 (1969), *Fuentes* v. *Shevin,* 407 U.S. 67 (1972); *Mitchell* v. *W. T. Grant Co.,* 416 U.S. 600 (1974); and *North Georgia Finishing, Inc.* v. *Di-Chem, Inc.,* ——U.S.——, 42 L. Ed. 753 (1975).

In *Sniadach* v. *Family Finance Corp., supra,* the Court held that a Wisconsin pre-judgment garnishment procedure which resulted in garnishment of wages without notice and prior hearing, violated fundamental principles of due process.

In *Fuentes* v. *Shevin, supra,* the Supreme Court examined the replevin acts of Florida and Pennsylvania. Both acts authorized the issuance of pre-judgment writs of replevin through a summary process of *ex parte* application to the court clerk, accompanied by the posting of bond for an amount in excess of the property's value. Neither act provided for notice and prior hearing or an immediate post-seizure hearing. Both acts did permit the respondent to recover his replevied property upon posting of a bond in double the amount of its value. The Court held that procedural due process required that a person in possession of chattels be given an opportunity for a hearing prior to issuance of a writ of replevin. The Court further held that posting of a bond was a minimal deterrent to abusive or even good faith use of the replevin procedure and constituted no substitute for a pre-seizure hearing.

In *Mitchell* v. *W. T. Grant Co., supra,* the Supreme Court carved out an exception to the pre-seizure hearing rule promulgated in *Sniadach* and *Fuentes.* There the Court upheld the validity of a Louisiana sequestration act which authorized sequestration of encumbered property upon *ex parte* application of a creditor without notice to the debtor or opportunity for prior hearing. The Court found, however, that the Louisiana act did provide safeguards not present in those statutes analyzed in *Sniadach* and *Fuentes.*

First, the Louisiana act required the creditor to file an affidavit before a judge, setting forth factual rather than

conclusory allegations which entitled the creditor to relief. A writ would only issue by the judge upon the proper showing. Second, and of equal importance, the act expressly entitled the debtor to an immediate post-seizure hearing; a hearing in which the burden was upon the creditor to prove the allegations contained in the affidavit. The Court found that these provisions sufficiently safeguarded the rights of the debtor to eliminate necessity for prior notice and hearing.

A Georgia garnishment act was examined by the Court in *North Georgia Finishing, Inc.* v. *DiChem, supra.* The Court determined that Georgia's summary procedure for garnishment satisfied neither the *Sniadach* and *Fuentes* requirement of pre-seizure hearing, nor the alternative judicial safeguards approved in *Mitchell.*

Having briefly summarized the applicable law, the Court now turns to the Illinois statute under constitutional challenge.

The Illinois Attachment Act (Illinois Revised Statutes, Ch. 11, 1973) authorizes a creditor with a money claim, whether liquidated or unliquidated and whether sounding in contract or tort, to attach the assets of an alleged debtor pending outcome of a lawsuit against the debtor on the money claim. The creditor can obtain a writ of attachment prior to filing his complaint against the debtor[1] and prior to the debtor having received notice of impending attachment or an opportunity to be heard on the question of whether the writ should issue.

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1. Pursuant to § 25 of the Act, the complaint must be filed at least ten days before the return date of the writ of attachment.

Section 1 of the Act provides for attachment in any of nine circumstances. Plaintiffs specifically attack four subsections which authorize attachment upon the creditor's allegations of debtor fraud:

> SIXTH: Where the debtor has within 2 years preceding the filing of the affidavit required, fraudulently conveyed or assigned his effects, or a part thereof, so as to hinder or delay his creditors.
>
> SEVENTH: Where the debtor has, within 2 years prior to the filing of such affidavit, fraudulently concealed or disposed of his property so as to hinder or delay his creditors.[2]
>
> EIGHTH: Where the debtor is about fraudulently to conceal, assign, or otherwise dispose of his property or effects, so as to hinder or delay his creditors.
>
> NINTH: Where the debt sued for was fraudulently contracted on the part of the debtor. . . .
>
> Ill. Rev. Stat., Ch. 11, § 1, sixth through ninth.

A creditor will be entitled to a writ of attachment, against an alleged debtor's property, upon the filing of an affidavit by the creditor, or his agent or attorney, which sets forth in verbatim statutory language one of the above allegations, along with the nature and amount of the claim and the name and place of residence of the debtor. Upon filing of this affidavit and the required bond with the clerk of the circuit court, the clerk issues a writ of attachment directing the sheriff to serve it upon the debtor, or another person holding the debtor's property.

If the action sounds in tort, under Section 2 of the Act the creditor must apply to a judge of the circuit court.

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2. This is the sole allegation of fraud set forth in the affidavit of Defendant O'Malley upon which the writ of attachment was issued.

The judge, after questioning the creditor concerning the cause of action, endorses upon the affidavit the amount of damages for which the writ shall issue. Upon service of the writ, the sheriff takes and retains custody of the property attached or directs a third party in possession to withhold the attached property from the debtor.

The debtor may obtain release of his property prior to trial on the merits of the creditor's claim in two ways. First, the debtor can file a bond in double the value of the property attached, upon the condition that said property will be available for execution should judgment be rendered against him. Alternatively, he can file a bond in a sum sufficient to cover the amount of debt or damages alleged plus costs of suit.

Second, Section 27 of the Act provides that defendant debtor may answer by affidavit, denying the allegations set forth in the creditor's attachment affidavit; and if the court finds for defendant after trial on the merits of the attachment, the writ will be quashed. This section, however, does not give defendant an absolute right to a hearing on the attachment issue immediately after seizure.

The debtor whose property has been attached is thereby deprived of the use of his property from the date the writ is served until an uncertain future time when he receives a hearing on the attachment issue. Even if the debtor should seek a separate hearing thereon on the return date, the debtor can be deprived of his property for a period of sixty days, since Section 6 of the Act provides that the creditor shall set the return date from ten to sixty days after date of the writ.

It is clear on its face that the Illinois Attachment Act does not meet the due process standards established by the Supreme Court in the cases previously discussed.

The Illinois Act does not provide for pre-seizure hearing as required by *Fuentes*. Because of *Mitchell* v. *W. T. Grant Co., supra,* however, this Court does not hold that pre-seizure hearing is any longer an absolute requirement. However, neither does the Act provide the alternative safeguards approved by *Mitchell*. Specifically, the Illinois Act does not require the attachment creditor to set out facts in his affidavit which would entitle him to relief. The Act does not require the complainant to present such affidavit to a judge for determination of whether a writ should issue. Instead, the Act provides that upon conclusory allegatiosn in verbatim statutory language, coupled with certain procedural information, a writ will automatically issue from the clerk of the court.

The provision for judicial review in tort cases is limited only to the question of potential damages and determination of limit on the amount of property to be attached. The judge is not required to evaluate the legal sufficiency of sworn facts as was the case in *Mitchell*.

Neither does the Act provide for an *immediate* post-seizure hearing upon application of the debtor, a hearing in which the attachment creditor bears the burden of proving his entitlement to relief at risk of dissolution of the writ. The Illinois Act merely provides for a post-seizure hearing on application by the debtor at a time to be set at the convenience of the Court. The Court, therefore, is under no duty to set an immediate hearing.

For these reasons, this Court holds that the Illinois Attachment Act is on its face patently violative of the due process clause of the Fourteenth Amendment to the United States Constitution.

Plaintiffs are entitled to injunctive relief against defendants. Separate order to issue in accordance with this opinion.

Dated: December 15, 1975

APPENDIX C

THE ILLINOIS ATTACHMENT ACT, ILLINOIS REVISED STATUTES 1973,

CHAPTER 11.

1. Causes.] § 1. In any court having competent jurisdiction, a creditor having a money claim, whether liquidated or unliquidated, and whether sounding in contract or tort, may have an attachment against the property of his debtor, or that of any one or more of several debtors, either at the time of instituting suit or thereafter, when the claim exceeds $20, in any one of the following cases:

First: Where the debtor is not a resident of this State.

Second: When the debtor conceals himself or stands in defiance of an officer, so that process cannot be served upon him.

Third: Where the debtor has departed from this State with the intention of having his effects removed from this State.

Fourth: Where the debtor is about to depart from this State with the intention of having his effects removed from this State.

Fifth: Where the debtor is about to remove his property from this State to the injury of such creditor.

Sixth: Where the debtor has within 2 years preceding the filing of the affidavit required, fraudulently conveyed or assigned his effects, or a part thereof, so as to hinder or delay his creditors.

Seventh: Where the debtor has, within 2 years prior to the filing of such affidavit, fraudulently concealed or disposed of his property so as to hinder or delay his creditors.

Eighth: Where the debtor is about fraudulently to conceal, assign, or otherwise dispose of his property or effects, so as to hinder or delay his creditors.

Ninth: Where the debt sued for was fraudulently contracted on the part of the debtor: Provided, the statements of the debtor, his agent or attorney, which constitute the fraud, shall have been reduced to writing, and his signature attached thereto, by himself, agent or attorney.

1a. Venue.] § 1a. The venue provisions applicable to other civil cases shall apply to attachment proceedings; and in addition thereto, attachment proceedings may be brought in the County where property or credits of the debtor are found.

2. Affidavit — Statement — Examination under oath.] § 2. To entitle a creditor to such a writ of attachment, he or his agent or attorney shall make and file with the clerk of the circuit court, an affidavit setting forth the nature and amount of the claim, so far as practicable, after allowing all just credits and set-offs, and any one or more of the causes mentioned in section 1, and also stating the place of residence of the defendants, if known, and if not known, that upon diligent inquiry the affiant has not been able to ascertain the same together with a written statement, either embodied in such affidavit or separately in writing, executed by the attorney or attorneys representing the creditor, to the effect that the attachment action invoked by such affidavit does or does not sound in tort, also a designation of the return day for the summons to be issued in said action. In all actions sounding in tort, before the writ of attachment shall be issued, the plaintiff, his agent or attorney, shall apply to a judge of the circuit court of the county in which the suit is to be brought or is pending and be examined,

under oath, by such judge concerning the cause of action; and, thereupon, such judge shall indorse upon the affidavit the amount of damages for which the writ shall issue, and no greater amount shall be claimed.

2a. Form of affidavit.] § 2a. Affidavits for attachment before courts may be substantially in the following form:

STATE OF ILLINOIS,)
) ss.
..... County)

A B, being duly sworn, says: That (here state if affiant is agent or attorney of the creditor; if suit is by an individual or corporation, the name of such individual or corporation, and if the suit is by a firm, the name of the partners) has a just demand against (name of debtor), on account of (here make short statement of the nature and amount of the claim), and the affiant believes (the name of the creditor) is entitled to recover of said (name of debtor), after allowing all just credits and setoffs .... dollars and ..... cents, which is now due, and that he has good reason to believe and does believe that (name of debtor) (here state the residence of the debtor if known, or if not, that the affiant has made diligent inquiry and cannot ascertain his place of residence.)

.....

Subscribed and sworn to before me on this ..... day of ....., ..., A.D.

.....

My commission expires ....., ..., A.D.

(If action sounds in tort here include the endorsement

of judge as to amount of damages for which writ shall issue.)

3. Names, etc., heirs, etc.] § 3. [Omitted]

4. § 4 Repealed]

4a. Bond — State and its departments and officers exempt.] § 4a. Before granting an attachment, as aforesaid, the clerk shall take bond and sufficient security, payable to the People of the State of Illinois, for the use of the person or persons interested in the property attached, in double the sum sworn to be due, conditioned for satisfying all costs which may be awarded to such defendant, or to any others interested in said proceedings, and all damages and costs which shall be recovered against the plaintiff, for wrongfully suing out such attachment — which bond, with affidavit of the party complaining, or his agent or attorney, shall be filed in the office of the clerk granting the attachment. Every attachment issued without a bond and affidavit taken, is hereby declared illegal and void, and shall be dismissed: Provided, however, that nothing herein contained shall be construed to require the State of Illinois, or any Department of Government thereof, or any State officer, to file a bond as plaintiff in any proceeding instituted under this Act.[1]

4b. Court may fix bond in double value of property to be attached.] § 4b. The court, or a judge thereof, upon ex parte motion, without notice, supported by affidavit of the plaintiff, his agent or attorney, substantially describing the property to be attached, and the value thereof, may, if satisfied of the bona fides of the application and sufficiency of the bond under the circumstances of the case,

1. Section 1 et seq. of this chapter.

including proposed garnishments, fix the amount of the bond in double the value of the property to be attached, instead of double the sum sworn to be due, and in such event the writ shall direct the officer to attach said specifically described property, but the value of said property to be attached shall not be in excess of an amount sufficient to satisfy the debt claimed and costs. The court may require that said affidavit be supplemented by additional showing, by appraisal or otherwise, as to the value of said property, and may, upon motion of any party to the action claiming an interest in said property, either before or after actual attachment, require additional security, or order release of the attachment to the extent not covered by adequate double security.

5. Condition of bond.] § 5. The condition of the bond required in the preceding section[1] shall be applicable to alias and pluries writs as well as original writs and shall be substantially in the following form:

The condition of this obligation is such, that, whereas the above bounden ..... hath, on the day of the date hereof, prayed an attachment out of the ..... Court of said County, at the suit of ..... against the estate of the above named ..... Now, if the said ..... shall prosecute his suit with effect, or in the case of failure therein shall well and truly satisfy all costs which may be awarded to said ..... or to any person or persons interested in the property attached, and all damages and costs which shall be recovered against the plaintiff for wrongfully suing out the said writ of attachment, or alias or pluries

1. "Preceding section" now repealed. But see section 4a, ante.

writ or writs of attachment, then the above obligation to be void; otherwise to remain in full force and effect.

Additional bonds shall not be required for the issuance of alias and pluries writs, except as provided in Section 10a[2] of this Act.

6. Writ – Form.] § 6. The writ of attachment required in the preceding section shall be directed to the sheriff (and, for purpose only of service of summons, to any person authorized to serve writs of summons), or in case the sheriff is interested, or otherwise disqualified or prevented from acting, to the coroner of the county in which the suit is commenced, and shall be made returnable on a return day designated by the plaintiff, which day shall not be less than ten days or more than sixty days after its date. Such writ shall be substantially in the following form:

The People of the State of Illinois to the Sheriff of ..... County: or for the purpose only of service as summons; to any person authorized to serve writs of summons: – Greeting:

Whereas A B (or agent or attorney of A B, as the case may be), hath complained that C D is justly indebted to the said A B to the amount of ..... and that (here state the cause set out in the affidavit) and the said ..... having given bond and security, according to law: We therefore command you that you attach so much of the estate, real or personal, of the said C D, to be found in your county, as shall be of value sufficient to satisfy the said debt and costs, according to the affidavit, but in case any specific property of the said C D, found in your county shall be described in this writ, then you

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2. Section 10a of this chapter.

shall attach said described property only, and no other property, the said specified property to be so attached, being described as follows:

.....

.....

and such estate so attached in your hands to secure, or so to provide, that the same may be liable to further proceedings thereupon, according to law; and that you summon C D to appear and answer the complaint of said A B, before the ..... Court of ..... at ..... in the county of ..... on the ..... day of ..... next; and that you also summon ..... and such other persons as you shall be required by the said A B, as garnishees, to be and appear before the said court on the said ..... day of ..... next, then and there to answer to what may be objected against them. When and where you shall make known to the said court how you have executed this writ, and have you then and there this writ.

Witness ..... clerk of the said court, this ..... day of ..... in the year of our Lord, etc.

Which writ of attachment shall be signed by the clerk, and the seal of the court shall be affixed thereto.

7. Attachment against a joint debtor.] § 7. In all cases where two or more persons are jointly indebted, either as partners or otherwise, and an affidavit shall be filed as provided in the first section of this act, so as to bring one or more of such joint debtors within its provisions, and amenable to the process of attachment, then the writ of attachment shall issue against the property and the effects of such as are so brought within the provisions of this act; and the officer shall be also directed in said writ to summon, all defendants to the action, whether the at-

tachment is against them or not, to answer to the said action, as in other cases of joint defendants.

8. Execution of writ.] § 8. Such officer shall without delay execute such writ of attachment upon the property described in the writ, or in the absence of such description, upon the lands, tenements, goods, chattels, rights, credits, moneys and effect of the debtor, or upon any lands and tenements in and to which such debtor has or may claim any equitable interest or title, of sufficient value to satisfy the claim sworn to, with costs of suit as commanded in such writ.

Except as provided in Section 11[1] of this act, the writ of attachment may be levied only in the county to which the writ is issued, and by a proper officer of said county.

9. Certificate of levy – Effect.]. § 9. [Omitted]

10. Serving defendant – Return.] § 10. The officer shall also serve said writ upon the defendant therein, if he can be found, in like manner as provided for service of summons in other civil cases. The return of such writ shall state the particular manner in which the same was served. If the writ is served upon the defendant less than ten days before the return day thereof, he shall not be compelled to appear or plead until fifteen days after the return day designated in the writ. The writ of attachment may be served as a summons upon defendants wherever they may be found in the State, by any person authorized to serve writs in like manner as summons in other civil cases.

10a. Alias and pluries writs.] § 10a. [Omitted]

11. Pursuit of property.] § 11. [Omitted]

12. Writ issued and served on Sunday.] § 12. [Omitted]

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1. Section 11 of this chapter.

13. Writs to other counties.] § 13. [Omitted]

14. Possession – Forthcoming bond.] § 14. The officer serving the writ shall take and retain the custody and possession of the property attached, to answer and abide by the judgment of the court, unless the person in whose possession the same is found shall enter into bond and security to the officer, to be approved by him, in double the value of the property so attached with condition that the said estate and property shall be forthcoming to answer the judgment of the court in said suit. The sheriff, or other officer shall return such bond to the court in which the suit is brought, on the day to which such attachment is returnable.

15. Bond or recognizance to pay judgment.] § 15. Any defendant in attachment, desiring the return of property attached, may, at his option, instead of or in substitution for the bond required in the preceding section, give like bond and security, in a sum sufficient to cover the debt and damages sworn to in behalf of the plaintiff, with all interest, damages and costs of suit, conditioned that the defendant will pay the plaintiff the amount of the judgment and costs which may be rendered against him in that suit, on a final trial, within ninety days after such judgment shall be rendered or a recognizance, in substance as aforesaid, may be taken in open court, and entered of record, in which case the court shall approve of the security and the recognizance made to the plaintiff, and upon a forfeiture of such recognizance judgment may be rendered and execution issued as in other cases of recognizance. In either case, the attachment shall be dissolved, and the property taken restored, and all previous proceedings, either against the sheriff or against the garnishees, set aside, and the cause shall proceed as if the defendant had been seasonably served with a writ of summons.

16. Neglect of officer to take bond – Proceedings.] § 16. [Omitted]

17. Neglect to return sufficient bond – Proceedings.] [Omitted]

18. Suit on bond.] § 18. [Omitted]

19. Sustenance of live stock – Compensation.] § 19. When any sheriff or other officer shall serve an attachment on horses, cattle or live stock, and the same shall not be immediately replevied or restored to the debtor, such officer shall provide sufficient sustenance for the support of such live stock until the same shall be sold or discharged from such attachment. He shall receive therefor a reasonable compensation, to be ascertained and determined by the court out of which the attachment issued, and charged in the fee bill of such officer, and shall be collectible as part of the costs.

20. Perishable property.] § 20. When any goods and chattels are levied on by virtue of any attachment, and the sheriff or other officer having custody of such goods and chattels is of the opinion that they are of a perishable nature and in danger of immediate waste or decay, such sheriff or other officer shall demand that the plaintiff in such attachment obtain from the court out of which the attachment issued an order permitting such property to be sold not later than 24 hours after the levy has been made, upon due notice of sale to the defendant and to the public as the court in its order shall require. The money arising from such sale shall be liable to the judgment obtained upon such attachment, and deposited in the hands of the clerk of the court to which the process is returnable.

If the plaintiff in the attachment fails or refuses to obtain such an order for sale of perishable property, the sheriff or other officer making the levy shall be absolved of all responsibility to any person for loss occasioned by

the failure to sell or care for such perishable property. The demand of the sheriff or other officer shall be written and shall be delivered to the plaintiff or his attorney or agent, and to the defendant if found. If defendant is not found, a copy of the demand shall be posted on the premises where the perishable items are located. Plaintiff's motion for an order of sale of perishable property shall be treated as an emergency motion.

21. Garnishment.] § 21. The sheriff or any other person authorized to serve writs of summons shall, in like manner as writs of summons are served in ordinary civil cases, summon, wherever they may be found in the State, the persons mentioned in such attachment writ as garnishees and all other persons whom the creditor shall designate as having any property, effects, choses in action or credits in their possession or power, belonging to the defendant, or who are in anywise indebted to such defendant, the same as if their names had been inserted in such writ. The persons so summoned shall be considered as garnishees. The return shall state the names of all persons so summoned, and the date of such service on each.

Persons summoned as garnishees shall thereafter hold any property, effects, choses in action or credits in their possession or power belonging to the defendant which are not exempt, subject to the court's order in such proceeding, and shall not pay to the defendant any indebtedness owed to him subject to such order, and such property, effects, choses in action, credits and debts shall be considered to have been attached and the plaintiff's claim to have become a lien thereon pending such suit. A security which is transferable as provided in Section 8-320 of the Uniform Commercial Code[1] is, for purposes of this Act,

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1. Chapter 26, § 8-320

only in the possession or power of the person which carries on its books an account in the name of the defendant in which is reflected an interest in such security, or, if such security has been pledged by the defendant, the pledgee of the defendant.

22. Notice by publication and mail.] § 22. When it shall appear by the affidavit filed or by the return of the officer, that a defendant in any attachment suit is not a resident of this State, or the defendant has departed from this State, or on due inquiry cannot be found, or is concealed within this State, so that process cannot be served upon him, and that property of the defendant has been attached, or that persons having such property or effects, choses in action or credits belonging to defendant, or owing debts to him, have been summoned as garnishees, it shall be the duty of the clerk of the court in which the suit is pending to give notice, by publication at least once in each week for three weeks successively, in some newspaper published in this State, most convenient to the place where the court is held, of such attachment or garnishment, and at whose suit, against whose estate, for what sum, and before what court the same is pending, and that unless the defendant shall appear, give bail, and plead within the time limited for his appearance in such case, judgment will be entered, and the estate so attached or garnisheed sold or otherwise disposed of as provided by law. And such clerk shall, within ten days after the first publication of such notice, send a copy thereof by mail, addressed to such defendant, if the place of residence is stated in such affidavit; and the certificate of the clerk that he has sent such notice in pursuance of this section, shall be evidence of that fact.

23. Default.] § 23. No default or proceeding shall be taken against any defendant not served with summons within the State and not appearing, unless the first publication or personal service outside of the State be at least thirty days prior to the day at which such default or proceeding is proposed to be taken.

24. Continuance for want of publication or service.] § 24. If for want of due publication or service the cause shall be continued, the same proceedings shall be had at a subsequent return day to be fixed by the court, as might have been had at the return day at which the writ is returnable.

25. Filing of complaint – Answer or appearance – Time.] § 25. The complaint shall be filed ten days before the return day of the attachment, and if so filed the defendant, subject to the provisions of Section 10 of this Act,[1] shall file his answer or otherwise make his appearance on or before said day. If the complaint is not so filed the defendant shall not be compelled to appear or answer until fifteen days after the return day designated in the writ and if the complaint is not filed five days after the return day designated in the writ the defendant may, in the discretion of the court, have the suit dismissed.

26. Civil Practice Act – Application.] § 26. The provisions of the Civil Practice Act, including the provisions for appeal, and all existing and future amendments of said Act and modifications thereof, and the rules now or hereafter adopted pursuant to said Act, shall apply to all proceedings hereunder, except as otherwise provided in this Act.

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1. Section 10 et seq. of this chapter.

27. Pleadings.] § 27. The defendant may answer, traversing the facts stated in the affidavit upon which the attachment issued, which answer shall be verified by affidavit; and if, upon the trial thereon, the issue shall be found for the plaintiff, the defendant may answer the complaint or file a motion directed thereto as in other cases, but if found for the defendant, the attachment shall be quashed, and the costs of the attachment shall be adjudged against the plaintiff, but the suit shall proceed to final judgment as though commenced by summons.

28. Amendments.] § 28. [Omitted]

29. Interpleading.] § 29. In all cases of attachment, any person, other than the defendant, claiming the property attached, or garnisheed may intervene, verifying his petition by affidavit, without giving bond, but such property shall not thereby be replevied; and the court shall immediately (unless good cause be shown by either party for a continuance), direct a jury to be impaneled to inquire into the right of the property. In all cases where the jury finds for the claimant, and that such claimant is also entitled to the possession of all or any part of such property, the court shall enter judgment for such claimant accordingly and order the property attached or garnisheed to which such claimant is entitled to be delivered to such claimant, and the payment of his costs in such action. In cases where the jury finds for a claimant but further find that such claimant is not then entitled to the possession of any such property such claimant shall be entitled to his costs; and where the jury find for the plaintiff in the attachment, such plaintiff shall recover his cost against such claimant. If such claimant is a non-resident of the State he shall file security for costs as in case of non-resident plaintiff.

30. Counterclaim.] § 30. Any defendant against whom an attachment may be sued out under this Act, may avail himself in his defense of any counter-claim properly pleadable by the laws of this State.

31. § 31. Repealed.]

31a. Change of parties – Other amendments.] § 31a. [Omitted]

32. § 32. Repealed]

33. Proceedings in aid.] § 33. Upon the return of attachments issued in aid of actions pending, unless it shall appear that the defendant or defendants have been served with process in the original cause, notice of the pendency of the suit, and of the issue and levy of the attachment, shall be given as is required in cases of original attachment; and such notification shall be sufficient to entitle the plaintiff to judgment, and the right to proceed thereon against the property and estate attached, and against garnishees, in the same manner and with like effects as if the suit had been commenced by attachment.

34. Effect of judgment.] § 34. When the defendant has been served with the writ, or appears to the action, the judgment shall have the same force and effect as in suits commenced by summons; and execution may issue thereon, not only against the property attached, but the other property of the defendant.

35. Judgment by default – Special execution.] § 35. When the defendant shall be notified as aforesaid, but not served with process within the State, and shall not appear and answer the action, judgment by default may be entered, which may be proceeded upon to final judgment as in other cases of default, but in no case shall judgment be rendered against the defendant for a greater sum than appears, by the affidavit of the plaintiff, to have been due

at the time of obtaining the attachment, with interest, damages and costs; and such judgment shall bind, and a special execution shall issue against the property, credits and effects attached, and no execution shall issue against any other property of the defendant; nor shall such judgment be any evidence of debt against the defendant in any subsequent suit.

36. Property levied upon.] § 36. [Omitted]

37. Division of proceeds – Priority.] § 37. [Omitted]

38. Statement of participating judgments – Officer to divide proceeds.] § 38. [Omitted]

39. Payment into court.] § 39. [Omitted]

39a. Sale of livestock levied upon.] § 39a. [Omitted]

40. Appeals.] § 40. The plaintiff or defendant in any attachment, person intervening, and the sheriff, or either of them, who may feel aggrieved by the final order or judgment of the court, may prosecute appeals as by law is provided in other civil cases.

41. Fraud.] § 41. This act shall be construed in all courts in the most liberal manner for the detection of fraud.

42. Repeal.] § 42. [Omitted]

43. Repealed]

44. Amendment to pleadings. § 44. [Omitted]

APPENDIX D

Illinois Revised Statutes 1973, Chapter 23:

11–21. § 11–21. Fraud – Penalty.] Any person who by means of any false statement, willful misrepresentation, or failure to notify the county department or the local government unit, as the case may be, of a change in his status as required by sections 11–18 and 11–19, for the purpose of preventing the denial, cancellation or suspension of his grant, or a variation in the amount thereof, or through other fraudulent device obtains or attempts to obtain, or aids or abets any person in obtaining financial aid under this Code to which he is not entitled, shall be guilty of a Class A misdemeanor.

If an applicant makes and subscribes an application form under Section 11–15 which contains a written declaration that it is made under penalties of perjury, knowing it to be false, incorrect or incomplete in respect to any material statement or representation bearing on his eligibility, income or resources, the offender shall be subject to the penalties for perjury as provided in Section 32–2 of the "Criminal Code of 1961", approved July 28, 1961, as amended.[1]

A person who receives financial aid for which he was not eligible as a result of his making any false statement, wilful misrepresentation, or failure to notify the county department or local governmental unit, as the case may be, of a change in his status as required by Section 11–18 and 11–19, for the purpose of preventing the denial, cancellation or suspension of his grant, or a variation in the amount thereof, or by other fraudulent device, or a person who knowingly aids or abets any person in obtaining financial aid for which he is not eligible, shall be answerable to the county depart-

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1. Chapter 38, § 32–2.

ment or the local government unit, as the case may be, for refunding the entire amount of aid received. If the refund is not made, it shall be recoverable in a civil action from the person who received the aid, or from anyone who wilfully aided such person to obtain the aid. If fraud is proven in such action, the court may as a penalty assess an additional sum of money, up to but not in excess of the entire amount of aid provided, against the recipient or against any person who wilfully aided the recipient. If assessed, the penalty shall be included in any judgment entered for the aid received, and paid to the county department or the local governmental unit, as the case may be.